

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

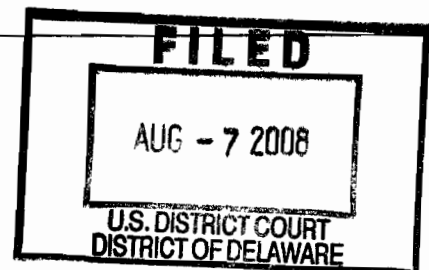
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United States District Court		District <u>of Delaware</u>
Name <u>Daniel Shaw</u>	Prisoner No. <u>176206</u>	Case No.
Place of Confinement <u>Howard B. Young Correctional Institute</u>		
Name of Petitioner (include name under which convicted) <u>Daniel Shaw</u>		Name of Respondent (authorized person having custody of petitioner) <u>v. state of Delaware</u>
The Attorney General of the State of: <u>Delaware</u>		

PETITION

- Name and location of court which entered the judgment of conviction under attack Superior Court, New Castle County Delaware.
- Date of judgment of conviction June 28, 2006
- Length of sentence 5 years 4 months level 5, probation & fines
- Nature of offense involved (all counts) Trafficking Cocaine, Possession with intent to deliver, maintaining vehicle, possession of paraphernalia, Reckless driving, DUI
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

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AO 241 (Rev. 5/85)

9. If you did appeal, answer the following:

- (a) Name of court Supreme Court
- (b) Result Affirmed
- (c) Date of result and citation, if known March 23, 2007
- (d) Grounds raised Err by trial court

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court N/A
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court N/A
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Superior Court
- (2) Nature of proceeding Post Conviction Relief
- (3) Grounds raised 1) Err by trial court (2) Illegal search (3) Chain of custody (4) conflict of testimony (5) weight of

AO 241 (Rev. 5/85)

drugs (6) Movant's rights violated (7) Effective
counsel (8) Denied suppression hearing

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Denied

(6) Date of result September 18, 2007

(b) As to any second petition, application or motion give the same information:

(1) Name of court Supreme Court

(2) Nature of proceeding Appeal

(3) Grounds raised Err by trial court (a) Illegal search

3) Chain of custody (4) conflict of testimony (5)

weight of drugs (6) movant's right violated

7) Effective Counsel (8) Denied suppression hearing.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Denied barred for issues not raised on Direct Appeal

(6) Date of result May 6, 2008

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

AO 241 (Rev. 5/85)

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Err by Appeal Court & Trial Court

Supporting FACTS (state *briefly* without citing cases or law): Supreme Court denied the petitioner due process, by not hearing his Appeal, which was done in a timely fashion, the Court violated his Constitutional rights, saying they would not hear case because issues were not raised on Direct Appeal, that was done by the Public Defenders office. See attached memorandum

B. Ground two: Illegal Search

Supporting FACTS (state *briefly* without citing cases or law): The cops searched car once then released car to owner, after owner of car went to hospital, police searched car again, without a valid search warrant, or owners consent, (see tow slip attached) on slip the arresting officer stated there were no drugs in car or on petitioner. See attached memorandum

C. Ground ~~Three~~ Illegal Arrest used for conviction

Supporting FACTS (state briefly without citing cases or law): The ~~defendant~~ ^{officer} used an
DUI Arrest to be able to search car, there was
no Breathalyzer, Blood sample, or Urine sample,
taken for a Alcohol concentration. Thus they used to
Search Car not once but twice,
(See attached memorandum)

D. Ground ~~Four~~ Conflict of testimony and Reports

Supporting FACTS (state briefly without citing cases or law): The testimony of the
State witness is completely different from the
Police reports that he wrote up and signed
(See attached memorandum)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

E Ground five Right to have witness testimony

Supporting FACTS (state *briefly* without citing cases or law): There were two male
witnesses that saw accident, police refused to get
their information, yet he got a female's information
that pulled up to the accident when he did,
thus she could not have seen anything.
(see attached memorandum)

F Ground six Err by trial court

Supporting FACTS (state *briefly* without citing cases or law): The court erred by
allowing DUI go to jury, Changing jury
instructions after state witness testified, not
explaining reasonable doubt in detail, and demanding
all find guilty or all find innocent, leaves no
room for acquittal.
(see attached memorandum)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

AO 241 (Rev. 5/85)

Ground seven petitioner was denied a fair hearing

Supporting FACTS (state briefly without citing cases or law): When trial judge allowed contaminated evidence in to trial and hearsay denied the petitioner a fair trial.

(see attached memorandum)

Ground Eight The weight of drugs changed weight

Supporting FACTS (state briefly without citing cases or law): The state first said the weight of drugs was 102 grams, then at trial they said the weight was actually 24.5 grams. State saying the scale was broken at first weighing.

(see attached memorandum)

Continued on next pages

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing T. Andrew Rosen Esq (Public

Defender 820 N French St Wilm DE 19801

(b) At arraignment and plea Robert Craft Esq (Public

Defender 820 N French St Wilm DE 19801

AO 241 (Rev. 5/85)

12. Ground nine Effective Counsel Trial, Appeal, preliminary hearing

Supporting FACTS (state briefly without citing cases or law): Counsel did not object when he should have, did not do motions when asked by petitioner. The outcome would have been different, and did not raise issues on direct appeal, petitioner wanted raises.

(See attached memorandum) Continued on next pages

13. Ground Ten Err by appellate Court

Supporting FACTS (state briefly without citing cases or law): refusing to hear appeal, saying issues had to be raised on Direct Appeal, even though they decided a couple of years previously that if raised on Direct Appeal, you could not raise issue on post Conviction Relief, for a decision was already made. (see attached memorandum)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

10/9

AO 241 (Rev. 5/85)

12 @. Ground Eleven Petitioner's Right of Due Process,
Equal Protection, 4th, 5th, 6th, 8th, 14th Amendment Violated

Supporting FACTS (state briefly without citing cases or law): illegal Search, by
the police, Did not give equal protection at case
review or trial that it gave other defendants.
Denied Due process.

(See Attached memorandum.)

12 B. Ground Twelve Chain of Custody

Supporting FACTS (state briefly without citing cases or law): officer did not take
evidence back to station right away, instead he rode
around for several hours with it in the trunk.
then left them sitting on table out in the open.
This is according to testimony from Cpl Sandusky
investigating officer

(See attached memorandum.)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly
what grounds were not so presented, and give your reasons for not presenting them:

Court Blocked petitioner

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked
herein:

(a) At preliminary hearing T. Andrew Raven Esq public
defender 820 N. French St Wilm DE 19804

(b) At arraignment and plea

AO 241 (Rev. 5/85)

(c) At trial Robert Greff Esq.(d) At sentencing Robert Greff Esq.(e) On appeal Nicole Waller (Public Defender)
820 N French St Wilm DE 19801(f) In any post-conviction proceeding N/A(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7/18/08
(date)*Shawn Shaw*
Signature of Petitioner

Daniel Shaw
1301 G 12th St
Wilm, DE 19804
176206

5-13



Clerk of United States District Court
for the District of Delaware
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